

expressions it would seem, and it has been so understood by some here, that land might be taken in execution by process emanating from any court whatever; as well from the lowest as from the highest, and as well from a court of record as from one not of record. If so, there can be no doubt that lands might be taken and sold by virtue of an execution issuing upon a judgment rendered by a justice of the peace. (r)

But this statute of 1732, points to another analogy which casts much light upon this subject; it declares, that lands shall be assets in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond. Now it is clear, as has been shewn, that lands, in England, can only be made liable as assets for the satisfaction of such debts by a suit in a common law court of record, or in a Court of Chancery. Whence it may be strongly inferred, that as land cannot be taken in execution under any process emanating from a court not of record in England, it cannot be sold by virtue of an execution upon a judgment rendered by a justice of the peace here, whose jurisdiction, in regard to small debts, cannot, in any respect, be considered as that of a court of record. And besides, where lands are sold under a *fiere facias*, it is necessary that the execution should be returned in order that there may be written and recorded evidence of the title so conveyed; but, although an execution from a justice of the peace may be returned, there is no law authorizing it to be recorded, and recognized as evidence of that grade and for that purpose. (s)

This statute of 1732, provides, that houses, lands and other hereditaments and real estate, shall be chargeable with all just debts; and then proceeds to declare, that they shall be assets for the satisfaction thereof in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond. This latter specification of the *manner* of the liability, has been considered as an indication of the kind of the real estate intended to be embraced by it; and taking this as the criterion by which to ascertain how far any interest in lands or real estate of any description should be considered as having been subjected to the payment of debts by this statute, it has been applied, certainly to

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(r) *West v. Hughes*, 1 H. & J. 6; 1799, ch. 86; 1801, ch. 42, s. 2.—(s) 1809, ch. 76, s. 4; 1814, ch. 82; *Duvall v. Waters*, 1 Bland, 590. This matter has been since disposed of by the act of 1831, ch. 290. *Den. v. George*, *Taylor's Rep.* 22.